

Caillavet
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J. A. Caillavet

Am. v. c.
W. B. Transcript

Am. Bernard & wife

few { Transcript 4.95-
Certificate 1.37
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Civil proceedings in the Honorable the Circuit Court of Harrison County in the State of Mississippi at a Term thereof began and held at the Court House of said County on the first Monday in September 1844 being the 7th day thereof. Present the Honorable Thomas A. Willis, Judge of the Second Judicial District of said State therein solely presiding, Wiley P. Harris District Attorney, Pro Se, Thomas A. Hester Sheriff and W. G. Evans Clerk.

Be it remembered, that a writ of Capias ad respondendum, was issued out of the Court aforesaid, and return thereon made, in the words and figures following to wit.

"The State of Mississippi
To the Sheriff of Harrison County— Greeting
We Command you that you take the body of Arrie Bernard, if to be found in your County, and him safely keep, so that you have him before the Honorable the Circuit Court of Harrison County, to be holden at the Court house of said County in Mississippi City, on the fifth Monday of September next to make answer unto Louis A. Paillaret, administrator of all and singular the goods, Chattels rights and Credits which were of Adolph Paillaret deceased, at the time of his death who did Intestate, of a plea of trespass on the Case in Trover to the damage of the said Plaintiff one thousand dollars as it is said, and herein fail not, and have then and there this writ.

Witness the Honorable Henry Mounzer, Judge of the fifth Judicial Circuit Court District of said State, the third Monday of March A.D. 1844 and the seal of said Court annexed. Issued the 10th day of September 1844. W. C. Seaman, Clk

(Indorsement)

This is an action of Trover brought to recover the sum of One thousand dollars damages for the illegal conversion by the defendant of one horse, one cart, two pair of pistols, one gold watch, one gold finger ring, one pistol case and apparatus, and one skiff boat, to his own use, the said goods and chattels being the property of the plaintiff. No Bail required, but judgment will be required at the return term of this writ

W. A. Champlin
Plaintiff's Attorney

And at the issuing of said writ the plaintiff filed his declaration, in the words and figures following to wit.

The State of Mississippi In the Circuit Court
Harrison County To September Term 1844

Louis A. Caillavet administrator of all and singular the goods chattels and credits which were of Adolph Caillavet deceased, at the time of his death who died intestate complains of Arrie Bernard and Adelle his wife being in custody &c. For that whereas the said Adolph Caillavet in his lifetime to wit on the 10th day of November A.D. 1842 was lawfully possessed as of his own property of divers goods and chattels to wit, to wit, one horse one cart two pair of pistols, one gold watch, one gold finger ring one pistol case and apparatus, and one skiff boat of great value to wit, of the value of one thousand dollars, and being so possessed thereof the said Adolph Caillavet afterwards to wit on the day and year aforesaid at to wit, the County aforesaid died so possessed thereof, after whose death to wit, on the day and year last aforesaid at to wit

the County aforesaid the said goods and chattels came to the possession of the said Adelle whilst she was sole and unmarried by finding, And afterwards to wit on the 11th day of November A.D. 1827 at to wit the County aforesaid administration of all and singular the goods chattels and credits which were of the said Adolphe Caillavet deceased at the time of his death who duly submitted by the Probate Court of Harrison County in due form of Law was granted to the said plaintiff. Yet the said Adelle whilst she was sole and unmarried, and the said defendants since their intermarriage well knowing the said goods and chattels to be the property of the said Adolphe Caillavet in his lifetime, and at the time of his death and to belong to the said plaintiff as administrator as aforesaid after the death of the said Adolphe Caillavet, but contriving and intending to defraud the said plaintiff as administrator as aforesaid in this behalf the said Adelle whilst she was sole and unmarried and the said defendants since their intermarriage did not deliver the said goods and chattels, or any or either of them or any part thereof to the said plaintiff as administrator as aforesaid since the death of the said Adolphe Caillavet, although often requested so to do, but the said Adelle whilst she was sole and unmarried and the said defendant Arne Bernard since their intermarriage to wit, on the day and year aforesaid at to wit the County aforesaid, converted and disposed of the said goods and chattels to the use of the said Arne Bernard, to the damage of the said plaintiff as administrator as aforesaid, One Thousand Dollars, and therefore he brings his suit &c. And the said plaintiff brings into Court here the Letters of administration of the said Probate Court of Harrison County which give sufficient evidence to the Court here of the grant

of Administration to the said plaintiff the date whereof is a certain day and year therein mentioned Court, the day and year in that behalf above mentioned &c.

W. A. Champier
Attorney for plaintiff

Filed in my office this 10 day of September 1864
J. M. C. Haman clk

And at the return Term made in said writ the defendants by E. J. Fournquet their attorney pleaded in these words To wit

And the said Arne Bernard and Adelle Bernard his wife by E. J. Fournquet their attorney come and defend the wrong and injury when &c and say that they are not guilty of the premises in the above declaration laid to their charge, in manner and form as the said Louis A. Caillaret admr hath above thereof complained against them, and of this they put themselves upon the Country.

And for further plea in this behalf the said Arne Bernard, and Adelle Bernard his wife, come and defend the wrong and injury when &c and say actio non, because they say that they are entitled as of their own right to all and every of the articles in the above declaration specified, to this wit that is to say, that the said Adelle, wife of Arne Bernard was the lawfully wedded wife of Adolphe Caillaret deceased, in right of whom, and as widow administratrix, Louis A. Caillaret now sues, and that the said Adelle became possessed of the said articles by reason of her right as widow of Adolphe Caillaret deceased and by the force of the Statute in such case made and provided And of this the said Arne Bernard, and Adelle his wife are ready to verify

wherefore they pray Judgment of the said Louis A. Cailliet as aforesaid, ought to have or maintain his aforesaid action thereof against them &c.

C. P. Tournequet
for Defendants

The State of Mississippi } Circuit Court
Harrison County } 5th March Term 1848
(Louis A. Cailliet, Adm'r)

vs.
Armed Bernard, Et Al. } And the said plaintiff
as to the second plea of
the said defendants secondly above pleaded, saith
that the same, and the matters therein contained, in
manner and form as the same are above pleaded
and set forth are not sufficient in Law to bar
or preclude him the said plaintiff from having
or maintaining his aforesaid action thereof against
them the said defendants and that the said plain-
tiff is not bound by Law to answer the same,
and thus he the said plaintiff is ready to verify
wherefore by reason of the insufficiency of the said
plea in this behalf the said plaintiff prays judg-
ment and his damages by him sustained on occa-
sion of the committing of the said grievances to be
adjudged to him &c.

W. A. Champlin plffs Atty

And the said plaintiff shews the following special
causes of Demurrer to wit

1st, Because the defendant has not by his plea traversed
or denied, or attempted to put in issue the matter of
fact alleged by plaintiff, but has introduced and
attempted to put in issue matters of fact not alleged
nor necessary to be alleged, and the plea is no
answer to the said declaration but evasive and
argumentative

2d, Because the said plea amounts to the general issue

3d, Because the said plaintiff doth not admit the

property to be in the plaintiff but sets up a title to it themselves.

With That the said plea is inartificially pleaded and in other respects uncertain and informal
 1st Because the said plea doth ^{not} traverse the Conversion or Confess and avoid it

W. A. Champin plffs Atty"

"Louis A. Caillaret Admr. } The defendants by their
 vs. } attorney come and say
 Arne Bernard & wife } that the plea in this case
 secondly above pleaded
 and the matters and things therein contained
 and in manner and form as pleaded are good
 and sufficient in Law, and prays that the same
 may be adjudged good and sufficient by This
 Honble Court,

C. P. Tourniquet
 for defendants"

And now to wit, at a day of the March Term
 A.D. 1846 of the Circuit Court of Harrison County
 to wit the 5th day of said month, the following order
 was made by said Court.

"L. A. Caillaret }
 vs. }
 Arne Bernard } Demurrer Confessed, and leave
 given to file plea Plus darin
 Continued"

"Louis A. Caillaret Admr. }
 No. 90. of Adrephe Caillaret } Circuit Court
 vs. } Harrison County
 Arne Bernard and wife } Do. March Term
 A.D. 1846.

And now at this day that is to say, on the first
 Monday in March 1846. unto which day the plea
 aforesaid has stood Continued Come the defendants

(Anne Bernard and wife by their attorney and the said defendants saith, that the said Louis A. Caillaret administrator as aforesaid ought not further to have or maintain his aforesaid action thereof against them, because they say, that after the last Continuance of this cause, and before this day to-wit on the 23^d day of September 1846. Peter Giraudy, Charles Bellman, and Benix Lamise, Commissioners appointed by an order of the Honorable the Probate Court of Harrison County, did set aside out of the Estate of Adolphe Caillaret, deceased, whose administrator now sues, the following named property as the legal right of the defendant Adelle Bernard, widow Caillaret, in the said Estate, that is to say, one Horse one Cart, and certain other personal property out of the said deceased Estate, to the value of one hundred and fifty dollars as is proved by the return of the said Commissioners now shown to the Court here and this the said defendants are ready to verify, therefore they pray Judgment if the said plaintiff ought further to have or maintain his aforesaid action thereof against them, and of this the said defendants put themselves upon the Country

Sworn and sub-
scribed to in open
Court this 5th of March 1846. "Henderson & Pourneguet
Defts Attorneys"

Arrie Bernard.
"W. G. Evans Clerk"

The State of Mississippi } In Circuit Court
Harrison County } March Term 1846.
Louis A. Caillaret admr &c.)

vs. And the said
Arrie Bernard &c. na. } plaintiff, as to the
said plea of the said defendants by leave of Court
plead per darcin Continuance saith that the
same, and the matters therein contained in manner

and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the said plaintiff from having or maintaining his aforesaid action thereof against them there the said defendants, and that the plaintiff is not bound by law to answer the same, and this the said plaintiff is ready to verify, wherefore by reason of the insufficiency of the said plea, in this behalf the said plaintiff prays Judgment, and his damages by him sustained on the occasion of the committing the said grievances to be adjudged to him &c.

Must @ Champlin
for plaintiff."

"And the plaintiff according to the form of the statute in such case made and provided shews to the Court ~~the~~ here the following causes of Demurrer to wit.

First - Because the said plea does not - any Judgment or decree of the Probate Court of Harrison County appointing the said Commissioners.

Second. Because it does not shew, that the report of the said Commissioners was ever approved of by or confirmed by said Probate Court.

Third. Because the said plea does not shew that the property set aside by said Commissioners is the same property, sued for in this action.

Fourth - Because the said plea does not shew what property if any was set aside by said Commissioners.

Fifth - For other causes appearing upon the face of said plea."

And now to wit at a day of the March Term A.D. 1846 of the Circuit Court of Harrison County, to wit, the 6th day of March, A.D. 1846, the following order was made by said Court.

L. A. Caillavet. }
Arnerd Bernard } Demurrer to defendants plea. pass.

darein Continuance, sustained, and leave to amend granted and Continued at costs of defendant for this term"

Whereupon the defendants filed their amended plea of puis darein Continuance, in the words and figures following to-wit.

Louis A. Caillavet admr. No 90. as of Adolphe Caillavet	}	Circuit Court
Anne Bernard & wife		Harrison County
		To March Term
APR 1846.		

And now at this day, that is to say on the first Monday in March 1846. until which day the plea aforesaid has stood Continued, Come the defendants Anne Bernard and wife, by their attorney, and the said defendants, saith, that the said Louis A. Caillavet Administrator as aforesaid, ought not further to have or maintain his aforesaid action thing against them, because they say, that after the last Continuance of this cause, and before this day to-wit, on the 23^d day of September 1845. Peter Girard, Charles Bellman and Rene Lamuse, Commissioners appointed by an order of the Honorable the Probate Court of Harrison County did set aside out of the Estate of Adolphe Caillavet deceased, whose Administrator now sees the following named property as the legal right of the defendant Adelle Bernard, widow Caillavet in the said Estate, that is to say one horse, one cart, and certain other personal property out of the said deceased Estate to the value of one hundred and fifty Dollars, being the property sued for in the plaintiff's declaration, as is proved by the return of the said Commissioners now shewn to the Court here, and thus the said defendants are ready to verify, wherefore they pray Judgment if the said plaintiff, ought further to have,

or maintain his aforesaid action thereof against them, and of this the said defendants put themselves upon the Country.

Menderson and Fourniquet
Sworn and subscribed Defts Attorneys
to in open Court this 5th
day of March 1846. — Arne Bernard

W. G. Evans clk.

Filed in open Court this 5th day of March 1846.

W. G. Evans clk.

The State of Mississippi } In the Circuit Court
Harrison County } To September Term AD 1846.
Louis A. Caillat & Co. v.
vs.

Arne Bernard et al. And the said plaintiff as to the said amended plea of the said defendants lastly above pleaded, saith that the same, and the matter therein contained, in manner and form as the same are therein pleaded, and set forth, are not sufficient in law to bar or preclude him the said plaintiff from having or maintaining his aforesaid action thereof against them the said defendants, and that the said plaintiff is not bound by law to answer the same, and this he the said plaintiff is ready to verify, wherefore by reason of the insufficiency of the said plea in this behalf the said plaintiff prays Judgment and his damages by him sustained on occasion of the committing of the said grievances to be adjudged to him &c.

W. A. Champlin

Atty for plaintiff

And the said plaintiff according to the form of the statute in such cases made and provided shews to the Court here the following special causes of Demurrer.

First Because the said plea does not show on what day the last continuance of this action was made nor the time or place where the defence arose.

Second. Because by the defendants own showing a term

Court intervened between the time of the happening of the
defence set up in said plea, and the time of pleading the same.
Because the said plea does not show the time and place
when and where said defence arose.

Because the said plea does not show that the Probate Court
had jurisdiction or authority or right to appoint Commissioners
Because the plea does not show, to the Court, any order, judgment
or decree of the Probate Court appointing Commissioners or tender
any record of same.

Because the said plea does not show any judgment, order
or decree of the Probate Court confirming the acts of said
Commissioners.

Because the plea does not show, what specific property
the said Commissioners sold asside to the said defendants.

Because the said plea does not show that the property
alleged to have been set apart was the same property
sued for.

Because of other informalities apparent of the face of
the said plea.

Because the said plea concludes to the Country when
it should conclude with a

"Filed in Open Court this 7th day of September A.D. 1846
N. G. Evans clk"

L. A. Caillaet admr } The defendants by their
vs. } attys come and say that
Arne Bernard & us } the plea in this case Pres
darien Continued, and the matters and things
therein contained in form and manner as pleaded
are good and sufficient in Law, and prays that the
same may be so adjudged by this Honorable Court
Henderson & Bournequist
(for Defendants)

And now Trist, at a day of the September Term A.D. 1846
of the Circuit Court of Harrison County, Court, the 8th
day of September A.D. 1846 the following order was made
by said Court.

L. A. Caillaet admr vs. Arne Bernard & us. 3/3 Motion

to set aside plea Ples daren Continuance, because
one term of the Court had elapsed between the hap-
pening of the defence and pleading the same

(W. A. Champlin for motion)
On hearing the Counsel in this case the above motion
was overruled by the Court."

J. A. Gaillard admr &c. } Remover to amended
Arne Bernard & wife } Plea of Ples Daren
Continuance sustained.

Whereupon defendant
asked leave to amend the plea which was refused,
and Judgment Quod Recuprat, ordered, and writ
of Enquiry awarded.

Whereupon the case was submitted
to the following Jury to wit Michael Eldridge, N. Brown,
Louis Dayard, Louis Kaufman, Barny Bond, Jacob
Ebner, J. C. Woolsworth, William Parshall, Charles
Kaufman, J. Mcant, Charles Bellman, and J. Dugaine
who being duly chosen empannelled and sworn well
and truly to try the writ of Enquiry and assess
damages, upon their oath do say that they assess
his damages at one hundred and forty nine Dollars

It is Therefore Considered by the
Court, that the said plaintiff have and recover of the
said defendants the sum aforesaid, and the further
sum of _____ dollars and _____ cents
for his reasonable costs in this behalf expended.

(Bill of Exceptions)

Gaillard admr. } Be it remembered that on the
Arne Bernard & wife } trial of this case before the Jury
that after the plaintiff had closed
his testimony in the opinion that the defendant offered
to prove before the Jury that the following list of articles

Call 17

said for in plaintiffs declaration to wit, one horse, and
cart two pair of Pistols one pistol case and apparatus
were the bona fide property of the defendant in right
of the wife defendant and that the following list of
Articles said for in plaintiffs declaration was not in
the possession of defendants, nor had not been conveyed
to them and to wit 1 Skiff Boat, 1 Gold finger Ring
1 Gold Watch. But the right to offer such proof
was objected to by the plaintiffs and the objection
sustained by the Court, and the defendants were
prevented from offering any such evidence in their
defense.

Whereupon the defendants by counsel before the
Jury retired from the Box took this his bill of exceptions
to the rulings of the Court, and which was signed
sealed and allowed by the Court accordingly

Thos. A. Willis (Seal)

The State of Mississippi
Harrison County

J. Wesley C. Evans
Clerk of the Circuit Court of said County, do hereby
certify that the foregoing pages contain a full true
and correct transcript of the above stated case, as
the same now remains of Record and on file in
my Office

In testimony whereof I hereunto set
my hand, and the seal of said Court
this day of November AD 1846
Clerk
Circuit Court Harrison County